

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT W. SESSIONS and RAINER SCHMEICHEL

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Appeal No. 2000-1313  
Application No. 08/797,478

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ON BRIEF

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Before ABRAMS, STAAB and BAHR, Administrative Patent Judges.  
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-21, which are all of the claims pending in this application.

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BACKGROUND

The appellants' invention relates to a tamper-evident sealed package for a product, such as a wound dressing. An understanding of the invention can be derived from a reading of exemplary claims 1 and 8, which are reproduced in the opinion section of this decision.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Kurtz et al. (Kurtz) 1972	3,642,126	Feb. 15,
Wardwell 1976	3,938,659	Feb. 17,
Intini 1985	4,537,312	Aug. 27,

The following rejections are before us for review.

- (1) Claims 1-7 and 16-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Intini in view of Wardwell.<sup>1</sup>
- (2) Claims 1-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kurtz in view of Wardwell.

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<sup>1</sup> It is apparent from a reading of the examiner's rejection as a whole that the examiner's rejection is based on Intini in view of Wardwell, notwithstanding the omission of Wardwell from the examiner's statement of the rejection in the final rejection (Paper No. 12, page 2) and the answer (Paper No. 15, page 4).

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Reference is made to the brief (Paper No. 14) and the answer (Paper No. 15) for the respective positions of the appellants and the examiner with regard to the merits of these rejections.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

#### ***Rejection (1)***

Independent claim 1 reads as follows:

1. A tamper-evident sealed package for a product comprising a top sheet and a bottom sheet, the top sheet sealed to the bottom sheet so as to seal the product between the top and bottom sheets and provide a sealed package, the portion of the top and bottom sheets that are sealed to each other defining sealing areas, wherein at least a portion of the top sheet and a portion of the bottom sheet include tabs which extend beyond the sealing area<sup>2</sup> and are not sealed to one another, the top sheet of the sealed package having at least one perforation in its sealing area so that when the sheets are separated

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<sup>2</sup> It appears that "area" should be "areas."

from one another by relative movement of the tabs, the top sheet tears adjacent to the at least one perforation to provide an indication that the sealed package has been at least partially opened.

Independent claim 16 contains all of the limitations of claim 1 and further requires that the sealed package have at least two opposing side edges, with the at least one perforation being located adjacent each of the opposing edges.

Intini discloses a child-resistant tamper-evident package adapted to contain unit dose capsules or like products (column 1, lines 9-10). The package comprises a blister pack layer 18 having a plurality of capsule receiving pockets 22 therein. A thin backing film 20, which is rupturable under pressure, is adhered to the back of the blister pack layer. The blister pack layer is sandwiched between an outer front layer 12 and an outer back layer 14 which may be formed of a single integral member with a fold line or of separate pieces. The blister pack layer 18 is sized to be smaller than the outer front and rear layers 12, 14 so that layers 12, 14 may be sealed together to form an envelope about the blister pack layer.

The outer front layer 12 of Intini comprises a plurality of tab sections 32, 38 defined by die cuts 34, 40. The outer back layer 14 has a series of removable panels 44 and tear sections 50 adapted to act in conjunction with the tabs 32, 38. Access to capsules C within pockets 22 may be had by grasping a tab section 32 and tearing back to remove panel 44. As a result of the secure adhesion of the outer back layer 14 to film 20, the material forming panel 44 delaminates as illustrated in Figure 10. Thus, a portion of the material forming outer back layer 14 remains adhered to film 20, thereby requiring a greater force to expel a capsule from its pocket so as to prevent most children from accomplishing the same (column 5, lines 35-46).

Wardwell discloses a peelable package of pharmaceutical products such as sterile surgical dressings and surgical kits. The package is formed by a paper substrate 12 and a plastic cover layer 14 bonded together by a bonding system 18. The paper substrate 12 and plastic cover layer 14 extend beyond the seal line to form respective pull tabs 24, 26 for opening the package. To gain access to the contents, the user pulls on the two tabs.

The examiner recognizes that Intini lacks tabs which extend beyond the sealing area and are not sealed together, as required by independent claims 1 and 16, but contends that the provision of such tabs would have been obvious in view of the teachings of such tabs by Wardwell. For the reasons which follow, it is our opinion that the examiner's rejection is not well founded.

The outer layers 12, 14 of Intini, and hence the tabs 32, 38 and panels 44 and tear sections 50 thereof, are adhered together so that both are pulled back together to cause delamination of the panel 44 or tear section 50. In fact, the configuration of cutouts forming the tabs provides a thorough resistance to tear initiation and thus provides a greater security against children being able to open the package (column 4, lines 66-68). In that the top and bottom layers are intended to be pulled together to render the package more child resistant, the examiner's argument that it would have been obvious in view of Wardwell to provide an unadhered portion at the edges between the sheets of Intini "so there is less resistance to tearing to facilitate retrieval of the article" (answer, page 4) is not well taken. Accordingly, we

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shall not sustain the examiner's rejection of independent claims 1 and 16, or of claims 2-7 which depend from claim 1 and claims 17-20 which depend from claim 16, as being unpatentable over Intini in view of Wardwell.

***Rejection (2)***

Kurtz discloses a package comprising two sheets joined at their margins forming a compartment therebetween for holding an object such as a suture, suture needle, dressing, bandage, medicinal pill, or the like (column 1, lines 4-8). The opposing short edges of the package are provided with a plurality of tear-initiating areas 9 extending through sheets 1, 2 from the outer edge of the package towards the sealed compartment 3 formed therein. The tear-initiating areas may be of any conventional type such as weakened areas, slots, **perforations**, notches or the like (column 3, lines 23-25). One using the package knows that the short edges of the package include the tear-initiating areas. Further, since a plurality of tear-initiating areas are provided, a tear-initiating area can be located without the necessity of looking at the package.

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Wardwell is discussed above.

Claims 1-7 and 16-21<sup>3</sup>

Each of these claims requires that the top sheet and bottom sheet include tabs which extend beyond the sealing area and are not sealed to one another and at least one perforation in the sealing area of the top sheet so that as the sheets are separated from each other the top sheet tears adjacent the at least one perforation.

The Kurtz package comprises a top sheet and a bottom sheet sealed together at their peripheries, with both the top and bottom sheets being provided with perforations 9 in the sealing area. However, we find no structure in the Kurtz package that corresponds to the recited tabs which extend beyond the sealing area and are not sealed to one another. We do not share the examiner's view (answer, page 6) that Kurtz' disclosure in column 3, lines 54-57, in any way teaches or suggests tabs included in the top and bottom sheets which

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<sup>3</sup> Appellants' grouping of dependent claim 21 with claims 8-15 appears to be in error, as claim 21, like independent claims 1 and 16, recites both the tabs and the perforation. Accordingly, we shall consider claim 21 along with claims 1-7 and 16-20.



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extend beyond the sealing area and are not sealed to one another.

While Wardwell discloses a sealed package having pull tabs, we find no suggestion in the combined teachings of Kurtz and Wardwell to provide both the perforations taught by Kurtz and the pull tabs taught by Wardwell in a single package. The perforations of Kurtz are provided to facilitate opening of the package by tearing, while the pull tabs of Wardwell are provided to facilitate opening in an alternative manner, by pulling the top and bottom sheets apart. From our perspective, the references suggest one feature or the other, but not both.

For the foregoing reasons, we cannot sustain the examiner's rejection of claims 1-7 and 16-21 as being unpatentable over Kurtz in view of Wardwell.

Claims 8-15

In accordance with 37 CFR § 1.192(c)(7), we have selected independent claim 8 as the representative claim from the appellants' grouping of claims 8-15 to decide the appeal on

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this rejection under 35 U.S.C. § 103. See page 4 of appellants' brief.

Claim 8 reads as follows:

8. A tamper-evident sealed package for a wound dressing comprising a top sheet having an inner and outer surface, a bottom sheet having and [sic: an] inner and outer surface, and a wound dressing, the inner surface of the top sheet sealed to the inner surface of the bottom sheet so as to seal the wound dressing between the top and bottom sheets and provide a sealed package, the portion of the top and bottom sheets that are sealed to each other defining sealing areas, the top sheet of the sealed package having at least one perforation in its sealing area so that when the sheets are separated from one another, the top sheet tears adjacent to the at least one perforation to provide an indication that the sealed package has been at least partially opened.

Claim 8 recites at least one perforation, but, in contrast to claims 1 and 16, does not recite tabs extending beyond the sealing area and not sealed to one another. Additionally, claim 8 recites a wound dressing sealed within the package.

As discussed above, Kurtz discloses at least one perforation 9 in the sealing area of the package. The examiner (answer, page 4) asserts that "[w]hen the sheets are separated from each other, the top sheet tears adjacent to the

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perforation to show tampering of the package" and appellants do not challenge this assertion.

The examiner finds that Kurtz does not disclose a wound dressing (answer, page 5). It is apparent to us that, in making this finding, the examiner has overlooked the disclosure by Kurtz in column 1, lines 7-8, of an object such as a dressing or bandage held in the package. In our view, one skilled in the art would understand a dressing or bandage to be a "wound dressing" as used in claim 8. In any event, even without the specific disclosure of a dressing or bandage in the package by Kurtz, we share the examiner's opinion (answer, page 5) that it would have been obvious to a person of ordinary skill in the art to place a wound dressing within the Kurtz package for safe storage in an easy opening sterile package, as such a person would recognize a wound dressing as the type of medical or surgical product suitable for packaging in a package of the type taught by Kurtz, as illustrated, for example, by Wardwell.

The only argument offered by appellants' brief as to the patentability of the claims over Kurtz in view of Wardwell is that the applied references provide no teaching or suggestion

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to combine pull tabs as taught by Wardwell with a package having perforations as taught by Kurtz. This argument is not found persuasive with respect to claim 8 because, as noted above, claim 8 does not recite any tabs.<sup>4</sup>

In light of the above, we shall sustain the examiner's rejection of claim 8, as well as claims 9-15 which fall therewith, as being unpatentable over Kurtz in view of Wardwell.

#### CONCLUSION

To summarize, the decision of the examiner to reject claims 1-21 under 35 U.S.C. § 103 is affirmed as to claims 8-15 and reversed as to claims 1-7 and 16-21.

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<sup>4</sup> It is well established that limitations not appearing in the claims cannot be relied upon for patentability. In re Self, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982).

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No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

AFFIRMED-IN-PART

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JENNIFER D. BAHR	)	
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